NUMBER: 86 20 08

Supreme Court, U.S.
FILED
JUN 16 1987
JOSEPH F. SPANIOL, JR.
CLERK

UNITED STATES SUPREME COURT

OCTOBER TERM, 1986

CARL B. BRANSON,

APPELLANT

V.

COMMISSIONER OF INTERNAL REVENUE,

APPELLEE

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

JURISDICTIONAL STATEMENT

NO COUNSEL OF RECORD
CARL B. BRANSON
IN PROPRIA PERSONA
3163 W. ANDERSON DR.
PHOENIX, ARIZONA 85023
(602) 993-9462

QUESTIONS PRESENTED

1. Is the United States Tax Court a legislative Court?

2. Does the United States Tax Court have potent In Personam and/or In Rem jurisdiction with respect to this Appellant?

TABLE OF CONTENTS

I PRIOR DECISIONS 1

II BASIS OF JURISDICTION 1

III CONTROLLING LAW 2

IV STATEMENT OF THE CASE 3

V JUSTIFICATION FOR REVIEW 4

APPENDED MATERIALS

APPENDIX A
TAX COURT ORDER AND DECISION

APPENDIX B
T. C. MEMO. 1985-481

APPENDIX C
MEMORANDUM, NINTH CIRCUIT COURT

APPENDIX D
NOTICE OF APPEAL

APPENDIX E
CONSTITUTIONAL PROVISIONS (Verbatim)

APPENDIX F
STATUTORY PROVISIONS (Verbatim)

SOURCES OF AUTHORITY

SOURCE	PAGE
AMENDMENT I	2, 6, 8, 19
AMENDMENT V	2, 6
AMENDMENT VI	2, 6, 8
AMENDMENT VII	2, 6, 8, 14
AMENDMENT IX	2, 6, 7, 8, 14
AMENDMENT XIV SECTION 4	2, 11, 12
AMENDMENT XVI	2, 12
ARTICLE I SECTION 6, CLAUSE 1	2, 11, 12
ARTICLE I SECTION 6, CLAUSE 2	2, 11, 12
ARTICLE I SECTION 8, CLAUSE 1	2, 12
ARTICLE I SECTION 8, CLAUSE 17	2, 12, 16, 17
ARTICLE I SECTION 8, CLAUSE 18	2, 12, 16, 17
ARTICLE I SECTION 9, CLAUSE 4	2
ARTICLE I SECTION 9, CLAUSE 7	2, 11
ARTICLE I SECTION 10, CLAUSE 1	2, 11, 14
ARTICLE II SECTION 1, CLAUSE 7	2, 11, 12
ARTICLE III SECTION 1	2, 11, 12, 18
ARTICLE III SECTION 2	1

ARTICLE IV SECTION 3, CLAUSE 2 .... 2, 18

ARTICLE VI CLAUSE 1 ..... 2, 11, 12

Capital Traction Co. v. Hof 5
174 U.S. 1
19 S.Ct. 580
43 L.Ed. 873 (1899).

Flora v. United States 7
362 U.S. 145 (on rehearing 1959)

Glidden v. Zdanok 10, 13, 17
370 U.S. 530

Melton v. Kurtz 4, 6
575 F.2d 547 (5th Cir. 1978)

Miranda v. Arizona 8, 16
384 U.S. 436 (1966)

Northern Pipeline v. Marathon Pipe .. 10,
102 S.Ct. 2858 13, 17
___ U.S. ___.

Palmore v. United States .. 5, 10, 13, 17
411 U.S. 389 (1973)

T. C. Memo. 1985-481 ..... 7, 9

I

PRIOR DECISIONS

The decision of the Ninth Circuit Court of Appeals is an unreported opinion for appeal number 85-7714, filed by the Clerk of the Court on April 2, 1987.

The decision of the Tax Court was a Memorandum opinion for Tax Court number 16206-84 filed by the Clerk of the Court on September 16, 1985.

II

BASIS OF JURISDICTION

Appellate jurisdiction in this matter is conferred on this Court by the Constitution of the United States, Article III, section 2, and also by 28 USC 2101.

The decision of the Ninth Circuit Court of Appeals was filed by the Clerk of that Court on April 2, 1987; Notice of Appeal was filed by the Clerk of the Court of Appeals on April 29, 1987.

III

CONTROLLING LAW

The constitutional and statutory provisions involved in this case are set out verbatim in the Appendix.

The constitutional provisions which bear relevance in this case are: Amendment I, Amendment V, Amendment VI, Amendment VII, Amendment IX, Amendment XIV, and Amendment XVI; Article I Section 6, Clause 1 and 2; Articel I Section 8, Clause 1; Article I Section 9, Clause 4; Article I Section 9, Clause 7; Article I Section 10, Clause 1; Article II Section 1, Clause 7; Article III Section 1; Article IV Section 3, Clause 2; and Article VI, Clause 1.

The statutory provisions which bear relevance to this case are: 26 USC 61, 26 USC 7441 and 26 USC 7443.

IV

STATEMENT OF THE CASE

On or about 5 March 1984, the Commissioner of Internal Revenue issued a Notice of Deficiency against this Appellant.

This litigation was instituted by special appearance before the Tax Court challenging the jurisdiction of the court and the sufficiency of the Notice on 29 May 1984. Judgment adverse to this Appellant was entered by Memorandum Opinion on 16 September 1985. The Order of the Tax Court was filed on 25 September 1985.

Notice of Appeal was filed on 27 December 1985; continuing the jurisdictional challenge.

The Circuit Court affrimed the Tax Court decision on 2 April 1987. Notice of Appeal to this Court was filed by the Clerk of that Court on 29 April 1987.

The challenge to the jurisdiction of the Tax Court and the sufficiency of the Notice with respect to this Appellant are the only issues for consideration brought to this Court.

V

JUSTIFICATION FOR REVIEW

The Ninth Circuit Court of Appeals' decision to affirm the decision of the United States Tax Court is errant for a multitude of reasons.

The Circuit Court's reliance on Melton v. Kurtz, 575 F.2d 547 (5th Cir. 1978) to affirm the constitutionality of the statute providing for the tax court is inpertinent. This Appellant has not at any time challenged the ability of Congress to establish the United States Tax Court under the provisions of Article I of the Constitution; to do so would be utter folly. This Appellant has challenged the jurisdiction of the United States tax

Court with respect to himself, both In Personam and In Rem, relying upon footnote 2 and this Court's dicta in Palmore v. United States, 411 U.S. 389 (1973).

> Before passage of the District of Columbia Court Reform and Criminal Procedure Act of 1970, the local court system consisted of one appellate court and three trial courts, two of which, the juvenile court and the tax court, were courts of special jurisdiction.
> PALMORE v. UNITED STATES, supra, footnote 2 (emphasis added)
>
> Congress "may exercise within the District all legislative powers that the legislature of a state might exercise within the State, and may vest and distribute the judicial authority in and among courts and magistrates, and regulate judicial proceedings before them, as it may think fit, so long as it does not contravene any provision of the constitution of the United States." Capital Traction Co. v. Hof, 174 U.S. 1, 5, 19 S.Ct. 580, 582, 43 L.Ed. 873 (1899).
> PALMORE v. UNITED STATES, supra, at 398 (1973)

Additionally, the basis for this Appellant's challenge and the inpertinence of the Circuit Court's

reliance upon Melton v. Kurtz, supra, is confirmed in the Circuit's opening words of the Memorandum: "Branson challenges the "jurisdiction" of . . ."

This Appellant chose to freely exercise his rights under the Constitution and its amendments; his Amendment I right "to petition the Government for a redress of grievances" by making a special appearance before the United States Tax Court, challenging the sufficiency of notice and the jurisdiction of the Tax Court pursuant to Appellant's Amendment VII right to operate "according to the rules of the common law" as it is guaranteed by Amendment IX (rights retained by the people).

The "Notice of Deficiency" was insufficient and perceived as violative of Appellant's Amendment V "due process of law" protection as it relates to his Amendment VI, Amendment VII, and Amendment

IX common law right to be given notice of set-off.

The "Notice of Deficiency" showed only the amount allegedly owing without showing the credits against which set-off could or would be exercised. This fact left Appellant in a perilous and undefined position with respect to this Court's decision in Flora v. United States, 362 U.S. 145 (on rehearing 1959).

In Flora, this Court declared that the full amount of the alleged deficiency must be paid before a suit for refund could be initiated. The full amount alleged owing could have been set-off against the moneys already in the United States Treasury to the credit of this Appellant. However, Appellant was without substantive proof of this fact until after the present litigation was initiated. See footnote 5, T. C. Memo. 1985-481.

Appellant was, therefore, faced with the choice between, a) making an implied waiver of his Amendment VI right to a "speedy and public trial" and his Amendment I right "to petition the Government for a redress of grievances" by not bringing an immediate challenge to the Commissioner's error; or b) to freely exercise his Amendment I, VII, and IX rights by filing a Bill before the United States Tax Court under the common law doctrine of "special appearance," challenging the sufficiency of notice and the jurisdiction of the court.

This Appellant chose to claim and exercise his rights because of the perceived implications of this Court's rendering in Miranda v. Arizona, 384 U.S. 436 (1966), which may be summarized as: a knowledgeable, voluntary waiver of right may be fatal to the ability to maintain a position or defense.

Honorable Judge Fay repeatedly acknowledges the substance of this Appellant's special appearance:

> "Petitioner did not raise the issue of the disallowed charitable contributioin deduction in his petition;"
>
> ". . . petitioner has alleged no facts which are genuinely in dispute. He does not address respondent's deficiency determination;"
>
> "petitioner offered no evidence to dispute respondent's imposition of the additions to tax."
>
> "we conclude that no genuine issue as to any material fact remains . . "
>
> "In the petition, petitioner asserted that he was not subject to the jurisdiction of the Court, that he claimed his common law and constitutional rights, . . ."
>
> Reference: T. C. Memo. 1985-481

However, Honorable Judge Fay chose to ignore the jurisdictional challenge and did usurp In Personam jurisdiction over this Appellant by imposing a penalty in the amount of $3,000 over and above the amount of the deficiency alleged by the

Commissioner.

Similarly, the Circuit Court also chose to ignore the jurisdictional challenge advanced by this Appellant. The Circuit Court did, however, tacitly acknowledge the basis, at least in part, of the argument presented by this Appellant:

> "[Congress] may promulgate statutes and establish agencies and legislative courts for that purpose." (emphasis added)
>
> "The Tax Court is not, as Branson apparently believes, a local court established pursuant to Congress's power to govern the District of Columbia."

Reference: Circuit Court Memorandum

Additionally, due to the analysis rendered begining at page 405 in Palmore v. United States, supra; this Appellant also challenged the In Rem jurisdiction of the United States Tax Court. See also, Glidden v. Zdanok, 370 U.S. 530, and Northern Pipeline v. Marathon Pipe, 102

S.Ct. 2858, ___ U.S. ___.

Article I, Section 6, clause 1 and 2; Article II, Section 1, clause 7; and Article III, Section 1 of the Constitution confer, on Congress, the express authority and control over the compensation of the specified Government officers. The combined application of Article I, Section 9, clause 7, Article VI, clause 1, and Amendment XIV, Section 4, confer, on Congress, an implied authority and control over the class of persons satisfying the master - servant relationship (common law employer, employee). The authority and control of Congress over this class of persons is limited and challengeable only by the restriction imposed by Article I, Section 10, clause 1 of the Constitution and the common law rule of asumpsit, count of quantum meruit.

This Appellant is neither an officer of Government subject to the authority

granted by Article I, Article II, or Article III; nor is this Appellant a servant (employee) of Government subject to the implied authority of Article I, Article VI, Amendment XIV and the rules of the common law.

Therefore, neither the master - servant relationship, nor its companion, the creditor - debtor relationship for establishing Congressional authority or control over this Appellant or his compensation is satisfied.

The joint application of Article I, Section 8, clause 1 and Amendment XVI authorize Congress to "lay and collect taxes" on income "without apportionment among the several States." The Circuit Court correctly states that Congress has the ability to delegate this authority.

The jurisdiction of the Tax Court is perceived as analogous to the jurisdiction of the military courts. For the

military courts, geographic boundaries are governed by the location of the personnel; the subject matter jurisdiction is governed by the uniform military code, which, under specific circumstances may have the force and effect of law with respect to civilians. In light of the dicta of this Court in Palmore v. United States, supra, Glidden v. Zdanok, supra, Northern Pipeline v. Marathon Pipe, supra, and the citations contained therein, Appellant contends that the jurisdiction of the Tax Court is limited in the same manner as the jurisdiction of the military courts. That is, Congress must have plenary authority granted by the Constitution and rules of the common law to regulate the life, liberty, and property of the subject before that authority may be delegated to a legislative court.

Subsequently, a determination as to

whether or not this Appellant has income within the meaning of Amendment XVI must be had BEFORE the In Rem jurisdiction of the United States Tax Court may be determined as it relates to this Appellant.

Although the term "compensation" is substantively and constitutionally distinct from the term "income", this Appellant has not, as yet, located a decision of this Court which gives direction regarding the distinction between the terms. Therefore, this Appellant asserts and relies upon his rights as guaranteed and protected by the Constitution Amendment IX as it relates to his Amendment VII ability to operate "according to the rules of the common law" and Article I, Section 10, clause 1, regarding "law impairing the obligation of contracts" to enforce that distinction.

The testimony by affidavit (Form

1040) upon which the Commissioner relies as the basis for his claim against this Appellant is void ab initio due to the incompetence of the witness (this Appellant) at the time of its rendering.

This Appellant lacked the legal training and knowledge to discern between a) statutes which have the full force and effect of law with respect to him and b) statutes which lack the force and effect of law with respect to him. Additionally, due to the customs and practices of Appellant's parents and peers, Appellant lacked motivation to seek the assistance of counsel or otherwise attempt to acquire the knowledge required to assert a position with respect to the "income" tax until such time as the Commissioner subjected Appellant to an "audit." Appellant submitted an Affidavit before the Tax Court identifying the incompetence of the testimony.

Subsequently, as a result of legal incompetence, this Appellant reported compensation not subject to the control of Congress as if it were income for nearly a score of years due to the coercive force of fear of prosecution for failure to file an income tax return.

In addition, the Form 1040 testimony by affidavit is inadmissible as evidence against this Appellant in any proceeding as it fails to satisfy the "knowledgeable" and "voluntary" tests for waiver of rights as declared by this Court in Miranda v. Arizona, supra.

Consequently, there is no grant of authority upon which the United States Tax Court, established pursuant to Article I, may ground its jurisdiction with respect to this Appellant; and, the Notice of Deficiency is insufficient due to the incompetence of the testimony upon which it is based and the lack of proper notice

of set-off.

This is not to say that the United States Tax Court is totally void of constitutional jurisdiction; it merely lacks jurisdiction relative to this Appellant pursuant to the tests set out by this Court in Palmore v. United States, supra, Glidden v. Zdanok, supra, Northern Pipeline v. Marathon Pipe, supra, and the citations contained therein.

The issues raised by this Appellant are neither local to the District of Columbia nor are they of a sufficently specialize nature to grant Congress Carte Blanche authority to create Article I legislative courts. However, since there is an identifiable class of persons who satisfy the "specialized nature" test, the authority of Congress to establish the United States Tax Court pursuant to Article I (and expanded by

Article IV, section 3) cannot be challenged. But, since this Appellant is shown to be outside of the class of persons subject to the authority granted under the "specialized nature" test, a court manned by a judge enjoying Article III protection is required to hear this Appellant's "petition for redress of greivances."

An additional factor worthy of notice by this Court in its determination to hear this appeal is the Res Judicata bar to the Appellant's ability to challenge the factual basis of the Commissioner's allegation of deficiency in a suit for refund if the decisions of the United States Tax Court and the Ninth Circuit Court are allowed to stand without review by this Court. Should this Court concur with the Circuit in affirming the Tax Court decision, then the Res Judicata bar to subsequent litigation is a

necessary and proper protection against abuse of judicial process. However, without review by this Court, the Res Judicata bar serves to abrogate, at the minimum, this Appellant's Amendment I right to "petition government for a redress of grievances" and, by implication, indicates to this Appellant that the exercise of Constitutional rights is conditional upon the efficiency and efficacy of Congress.

This appeal is specifically and plainly limited to the determination of the jurisdictional capacity of the United States Tax Court as it relates to this Appellant, and as a consequence, the validity of the Three Thousand dollar ($3000) penalty imposed by the United States Tax Court. The deficiency alleged by the Commissioner has not been brought as an issue by this Appellant previously in this litigation and, therefore, is

subject to resolution between the parties independent of this proceeding.

Upon the strength of the foregoing rules of law, this Appellant appeals to this Court to accept jurisdiction and review the decisions of the Circuit Court and the United States Tax Court.

June 1987

Respectfully Submitted,

Carl B. Branson

Carl B. Branson
In Propria Persona

APPENDIX A

TAX COURT ORDER AND DECISION

UNITED STATES TAX COURT
WASHINGTON

CARL B. BRANSON,
Petitioner

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent

Docket No. 16206-84

ORDER AND DECISION

Pursuant to the determination of the Court as set forth in its Memorandum Findings of Fact and Opinion filed September 16, 1985, it is

ORDERED, that respondent's motion for summary judgment is granted. It is further

ORDERED AND DECIDED, that there is a deficiency in petitioner's Federal income tax for the year 1981 in the amount of $6,430.00 and additions to tax under

section 6653(a)(1) in the amount of $323.15 and under section 6653(a)(2) in an amount equal to 50 percent of the interest due on the deficiency. It is further

ORDERED AND DECIDED that damages are due from petitioner which are hereby awarded to the United States in the amount of $3,000.00, pursuant to section 6673, I.R.C. 1954, as amended.

William M. Fay

Judge

Enetered: SEP 25 1985

APPENDIX B

T. C. MEMO. 1985-481

T. C. Memo. 1985-481

UNITED STATES TAX COURT

CARL B. BRANSON,
Petitioner

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent

Docket No. 16206-84.

Filed September 16, 1985

Carl B. Branson, pro se.

Terence D. Woolston, for the respondent.

MEMORANDUM FINDINGS OF FACT AND OPINION

FAY, Judge This case is before the Court on respondent's motion for summary judgment pursuant to Rule 121 /n.1, and his motion for the award of damages under section 6673./n.2

With respect to petitioner's Federal income tax for 1981, respondent determined a deficiency of $6,463.00 and additions to

tax under section 6653(a)(1) in the amount of $323.15 and under section 6653(a)(1) in an amount equal to 50 percent of the interest due on the deficiency. The issues raised by the respondent's motions are whether wages and other amounts received by petitioner in 1981 are taxable, whether petitioner is liable for additions to tax under sections 6653(a)(1) and 6653(a)(2), and whether petitioner is liable for damages under section 6673.

Petitioner, Carl B. Branson, was a resident of Arizona when he filed the petition herein.

---

n.1 Unless otherwise indicated, all Rule references are to the Tax Court Rules of Practice and Procedure, and all section references are to the Internal Revenue Code of 1954, as amended and in effect during the year in issue.

n.2 Petitioner also filed a motion for judgment. See n. 7, infra.

Rule 121 provides that any party may move for summary judgment upon all or part of the legal issues in controversy. A motion for summary judgment will be granted where there is no genuine issue as to any material fact and a decision may be rendered as a matter of law. Adickes v. Kress & Co., 398 U.S. 144, 157 (1970). Although the burden of proving that there is no genuine issue of material fact is on the moving party, Espinoza v. Commissioner, 78 T.C. 412, 416 (1982), and Gulfstream Land & Development v. Commissioner, 71 T.C. 587, 596 (1979), if, in response to a motion for summary jugment, an adverse party rests upon the mere allegations or denials of his pleading and fails to set forth specific facts showing that there is a genuine issue for trial, a decision may be entered against him. Rule 121(d). Applying these standards, we conclude that respondent has

established the following facts and that his motion for summary judgment will be granted.

Petitioner holds a bachelor's degree in engineering. He was employed by GTE Automatic Electric Laboratories Incorporated and earned $46,461.12 in wages during 1981.

On his 1981 Federal income tax return, petitioner claimed a deduction for purported charitable contributions to the Universal Life Church, Inc., of Modesto, Calif., in the amount of $20,071.32. In his notice of deficiency, respondent disallowed the claimed deduction and imposed addtions to tax under sections 6653(a)(1) and 6653(a)(2) /n.3. In the petition, petitioner asserted that he was not subject to the jurisdiction of the Court, that he claimed his common law and constitutional rights, that he was not an employee pursuant to section 3401(c), that

he earned no wages within the meaning of section 3401(a), and that he was not subject to the withholding provisions under sections 3402(a) through 3402(p) /n.4.

Petitioner did not raise the issue of the disallowed charitable contribution deduction in his petition; that issue is therfore deemed conceded by him. Rule 34(b)(4).

With respect to respondent's motion for summary judgment, petitioner has

---

n.3 After the notice of deficiency was issued, petitioner filed an amended Federal income tax return for 1981 wherein he decreased the amount of income he originally reported and claimed as a refund all the tax liability reported on the original return.

n.4 Petitioner also argued in his memorandum in support of motion for judgment that Congress has no power under the Constitution to lay and collect a tax on "common law wages".

alleged no facts which are genuinely in dispute. He does not address respondent's deficiency determination; rather, his position consists of frivolous tax protestor type statements /n.5. His contentions are not new to the Court and we have rejected similar attempts by other taxpayers to evade the Federal income tax, see, e.g., Weller v. Commissioner, T.C. Memo. 1985-387, Bradley v. Commissioner, T.C. Memo. 1985-364, and Zozaya v. Commissioner, T.C. Memo. 1985-60. We have repeatedly held that earnings from one's services

---

n.5 Moreover, although petitioner was aware that respondent had conceded in his motion for summary judggment that he was holding $8,256.66 in withheld Federal income tax for petitioner's account, petitioner nonetheless complained in his petition and continued to do so at the hearing on the motions now before us that such funds were not properly credited in accordance with "commonly accepted accounting principles."

fall within the section 61 definition of gross income. See, e.g., Rowlee v. Commissioner, 80 T.C. 1111 (1983). Furthermore, "[t]he day has long since passed to object to the constitutionality of our system of taxation." United States v. McMullen, 755 F.2d 65,67 (6th Cir. 1984). Although he was given the opportunity to do so, petitioner offered no evidence to dispute respondent's imposition of the additions to tax. Thus, we conclude that no genuine issue as to any material fact remains with respect to respondent's determination of deficiency and the additions to tax under sections 6653(a)(1) and 6653(a)(2)/n.6. Accordingly, respondent's motion for summary judgment will be granted /n.7.

Respondent has also moved for award of damages under section 6673. As applicable herein, section 6673 provides that:

> Whenever it appears to the Tax Court that proceedings before it have been instituted or maintained by the taxpayer primarily for delay or that the taxpayer's position in such proceeding is frivolous or groundless, damages in an amount not in excess of $5,000 shall be awarded to the United States by the Tax Court in its decision. * * *

We find petitioner's position herein to be frivolous and groundless and, accordingly, respondent's motion will be granted.

---

n.6 Sec. 6653(a)(1) provides for an addition to tax of five percent of any underpayment that is due to negligence or intentional disregard of rules and regulations. Sec. 6653(a)(2) provides for an addition to tax in an amount equal to 50 percent of the interest payable under sec. 6601 with respect to the portion of the underpayment due to negligence or intentional disregard of rules and regulations for the period beginning on the last day for payment of the underpayment.

n.7 Since we grant respondent's motion for summary judgment, petitioner's motion for judgment is therefore denied.

Petitioner, a well educated and articulate person capable of preparing the numerous legal documents he filed with this Court /n.8, is yet another tax protester who has no legitimate dispute with respondent's determination but instead attempts to use this Court as a forum to avoid the payment of the Federal income tax. Petitioner has abused the processes of this Court and has wasted its resources and those of respondent. On the basis of the record, we conclude that the proceedings herein were instituted primarily for delay and that petitioner's position is both frivolous and groundless.

---

n.8 Petitioner filed with the Court a motion for default judgment, a motion for determination for jurisdiction, a motion to stay proceedings pending adjudication of jurisdictional motion, a motion for clarification of ruling, and a motion for determination of income. We denied all such motions.

We are authorized under section 6673 to penalize petitioner for raising dilatory or groundless claims. Sauers v. Commissioner, ___ F.2d ___ (3d Cir., Aug. 19, 1985), affg. a Memorandum Opinion of this Court. We accordingly award damages to the United States under section 6673 in the amount of $3,000.

To reflect the foregoing,

An appropriate order and decision will be entered.

APPENDIX C

MEMORANDUM, NINTH CIRCUIT COURT

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

No. 85-7714

Tax Ct. No. 16206-84

MEMORANDUM *

CARL B. BRANSON
IN PROPRIA PERSONA,

PETITIONER-APPELLANT,

vs.

COMMISSIONER OF INTERNAL REVENUE,

RESPONDENT-APPELLEE.

Petition to Review a Decision of the Tax Court of the United States
Submitted November 18, 1986 **

BEFORE: GOODWIN, SCHROEDER, and FLETCHER, Circuit Judges.

---

* This disposition is not appropriate for publication and may not be cited to or by Courts of this Circuit except as provided by 9th Cir. R. 21.

** The panel finds this case appropriate for submission without oral argument pursuant to Fed. R. App. P. 34(a); 9th Cir. R. 3(f).

Branson challenges the "jurisdiction" of the Congress of the United States to impose a tax on his wages, the "jurisdiction" of the Internal Revenue Service to collect that tax, and the "jurisdiction" of the Tax Court to hear his claim that a tax deficiency assessed against him was unjust. Branson's argument is constucted from various clauses in the United States Constitution not having to do with income taxation, and refernce to passages from Bouvier's Law Dictionary, Third Edition. His argument conflicts radically with long-standing judicial interpretation of the constitutional provisions he cites. More importantly, Branson overlooks other provisions of the Constitution that leave no doubt that Congress has the constitutional power to tax income earned in the United States, and that it may promulgate statutes and

establish agencies and legislative courts for that purpose.

Amendment XVI of the Constitution, expressly gives Congress the power "to lay and collect a tax on incomes, from whatever source derived." The word "income" in the Sixteenth Amendment is to be interpreted according to its everday usage. Old Colony Ry. Co. v. Commissioner of Internal Revenue, 284 U.S. 552, 560 (1932); Helvering v. Edison Bros. Stores, Inc., 133 F.2d 575, 579 (8th Cir. 1943). Branson does not, and could not, argue that his salary is not income, as that term is generally understood. See 26 U.S.C. 61(a)(1); see also Webster's New Collegiate Dictionary 576 (1979). "Income" includes earnings received from any source, not just the federal government. The Sixteenth Amendment requires furthermore that any income tax shall be "without apportionment among the

several states," and therefore contemplates that anyone receiving income shall be taxed individually and equally according to level of income, regardless of his or her state of residence. Branson suggests no reason why Congress's taxing power does not extend to him and his earned income.

Article I, (section) 8 of the Constitution gives Congress the power "[t]o make all laws which shall be necessary and proper for carrying into Execution [all] Powers vested by this Constitution in the Government of the United States." In the Internal Revenue Code, Congress has exercised its power to tax income. A taxpayer who would challenge successfully any provision of the Code must show that it is inconsistent with that broad constitutional power.

If Congress has the authority to provide for and collect an income tax, it

can validly delegate the authority to assess and collect to the Commissioner of the Internal Revenue Service. A constitutional power "implies a power of delegation of authority under it sufficient to effect its purpose." Lichter v. United States, 334 U.S. 742, 778 (1948). This, too, follows from the "necessary and proper" language of Article I, (section) 8.

For the same reasons, Congress also has the power to delegate authority to the Tax Court to redetermine deficiencies in income tax, which it has done in 26 U.S.C. 7442. The power to assess and collect deficiencies in tax is part of the power to levy and collect an income tax. The constitutionality of the statute providing for a tax court for that purpose has already been upheld in the courts. Melton v. Kurtz, 575 F.2d 547, 548 (5th Cir. 1978). The Tax Court is not, as Branson

apparently believes, a local court established pursuant to Congress's power to govern the District of Columbia. The power of Congress to tax income extends to residents of all of the states, and so, by the same token, does the jurisdiction of the Tax Court.

The order of the Tax Court is affirmed. Branson's appeal, which challenges the well-established constitutional power of Congress to tax income, is without merit. We have discretion to impose attorney's fees and double costs on an appellant in these circumstances. Fed. R. App. P. 38; 28 U.S.C. 1912. We will not do so, however, in view of the fact that Branson has proceeded without the assistance of an attorney and appears to be sincere in the arguments he makes despite their lack of merit.

APPENDIX D

NOTICE OF APPEAL

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CARL B. BRANSON,
Claimant-Appellant

vs.

COMMISSIONER OF INTERNAL REVENUE
Defendant-Appellees

NOTICE OF APPEAL

No. 85-7714

In compliance with United States Supreme Court Rules 10, 11, and 28, and 28 USC 2101, Notice is hereby given that the decision filed by the Clerk of this court on April 2, 1987 is appealled to the United Stated Supreme Court.

Dated this 25th day of April, 1987

Respectfully Submitted,

Carl B. Branson
In Propria Persona

APPENDIX E

CONSTITUTIONAL PROVISIONS

AMENDMENT I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

AMENDMENT V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the

assistance of counsel for his defense.

AMENDMENT VII

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any court of the United States, than according to the rules of the common law.

AMENDMENT IX

The enumeration in the Constitution of certain rights, shall not be construed to deny or disparage others retained by the people.

AMENDMENT XIV SECTION 4

The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

AMENDMENT XVI

The Congress shall have power to lay and collect taxes on incomes, from

whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.

ARTICLE I SECTION 6, CLAUSE 1

The Senators and Representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the Treasury of the United States. They shall in all cases, except treason, felony and breach of the peace, be privileged from arrest during their attendance at the session of their respective Houses, and in going to and returning from the same; and for any speech or debate in either House, they shall not be questioned in any other place.

ARTICLE I SECTION 6, CLAUSE 2

No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time; and no person holding any office under the United States, shall be a member of either House during his continuance in office.

ARTICLE I SECTION 8, CLAUSE 1

The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of

the United States; but all duties, imposts and excises shall be uniform throughout the United States;

ARTICLE I SECTION 8, CLAUSE 17

[Congress shall have power] To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular States, and the acceptance of Congress, become the seat of government of the United States, and to exercise like authority over all places purchased by the consent of the Legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings; -- And

ARTICLE I SECTION 8, CLAUSE 18

To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof.

ARTICLE I SECTION 9, CLAUSE 4

No capitation, or other direct, tax shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken.

ARTICLE I SECTION 9, CLAUSE 7

No money shall be drawn from the Treasury, but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

ARTICLE I SECTION 10, CLAUSE 1

No State shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility.

ARTICLE II SECTION 1, CLAUSE 7

The President shall, at stated times, receive for his services, a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States, or any of them.

ARTICLE III SECTION 1

The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The Judges, both of the Supreme

and Inferior Courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office.

ARTICLE IV SECTION 3, CLAUSE 2

The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this Constitution shall be construed as to prejudice any claims of the United States, or of any particular State.

ARTICLE VI CLAUSE 1

All debts contracted and engagements entered into, before the adoption of is Constitution, shall be valid against the United States under this Constitution, as under the Confederation.

APPENDIX F

STATUTORY PROVISIONS

26 USC 61

(a) GENERAL DEFINITION. Except as otherwise provided in this subtitle, gross income means all income from whatever source derived, including (but not limited to) the following items:

(1) Compensation for services, including fees, commissions, and similar items;
(2) Gross income derived from business;
(3) Gains derived from dealings in property;
(4) Interest;
(5) Rents;
(6) Royalties;
(7) Dividends;
(8) Annuities;
(9) Alimony and separate maintenance payments;
(10) Income from life insurance and endowment contracts;
(11) Pensions;
(12) Income from discharge of indebtedness;
(13) Distributive share of partnership gross income;
(14) Income in respect of a decedent; and
(15) Income from an interest in an estate or trust;

(b) CROSS REFERENCES. -- For items specifically included in gross income, see part II (sec. 71 and following). For items specifically excluded from gross income, see part III (sec. 101 and following).

26 USC 7441

Ther is hereby established, under article I of the Constitution of the United States, a court of record to be known as the United States Tax Court. The members of the Tax Court shall be the chief judge and the judges of the Tax Court.

26 USC 7443

(a) NUMBER.-- The Tax Court shall be composed of 19 members.

(b) APPOINTMENT.-- Judges of the Tax Court shall be appointed by the President, by and with the advice and consent of the Senate, solely on the grounds of fitness to perform the duties of the office.

(c) SALARY.--

(1) Each judge shall receive salary at the same rate and in the same installments as judges of the district courts of the United States.

(2) For the rate of salary and frequency of installment see section 135, title 28, United States Code, and section 5505, title 5, United States Code.

(d) EXPENSES FOR TRAVEL AND SUBSISTENCE.-- Judges of the Tax Court shall receive necessary traveling expenses, and expenses actually incurred for subsistence while travelng on duty and away from their designated stations, subject to the same limitations in amount as are now or may hereafter be applicable to the United States Customs Court.

(e) TERM OF OFFICE.-- The term of office of any judge of the Tax Court shall expire 15 years after he takes office.

(f) REMOVAL FROM OFFICE.-- Judges of the Tax Court may be removed by the President, after notice and opportunity for public hearing, for inefficiency, neglect of duty, or malfeasance in office, but for no other cause.

(g) DISBARMENT OF REMOVED JUDGES.-- A judge of the Tax Court removed from office in accordance with subsection (f) shall not be permitted at any time to practice before the Tax Court.